

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROOFERS LOCAL 149 SECURITY BENEFIT
TRUST FUND, ROOFERS LOCAL 149 PENSION
FUND, ROOFERS LOCAL 149 VACATION HOLIDAY
FUND, ROOFERS LOCAL 149 APPRENTICESHIP FUND,
ROOFING INDUSTRY PROMOTION FUND,

Plaintiffs,

Case No: 05-CV-60218

v.

HONORABLE JOHN CORBETT O'MEARA
MAGISTRATE JUDGE STEVEN D. PEPE

MILBRAND ROOFING GROUP, INC., A MICHIGAN
CORPORATION, JON K. MILBRAND, INDIVIDUALLY,
MILBRAND ROOFING COMPANY, A MICHIGAN
CORPORATION, JKM ROOFING COMPANY, A
MICHIGAN CORPORATION, WILLIAM RICHARDSON
AND MICHAEL K. ROYE, INDIVIDUALLY,

Defendants.

_____ /

ORDER GRANTING DEFENDANT RICHARDSON'S MOTION TO QUASH (DKT. #195)

The discovery cut-off in this case was June 30, 2007 (Dkt. #173). On or about June 27, 2007, Attorney Dayna Milbrand executed a subpoena on behalf of an unspecified "Defendant" addressed to "Bill Richardson and Lisa Richardson and Milbrand Roofing Co. c/o Sarah Arnold, 74 West Long Lake Road, Suite 200, Bloomfield Hills, MI 48305." (Dkt. #195, Ex. A). On July 12, 2007, Defendant Richardson filed his motion to quash this subpoena alleging that it was fatally defective (Dkt. #195). Defendant's motion was referred for hearing and determination on

July 27, 2007 (Dkt. #214). On August 22, 2007, a hearing was held on Defendant Richardson's motion at which all unresolved issues were heard. For the reasons stated on the record and indicated below, it is **ORDERED** that Defendant Richardson's motion is **GRANTED**.

The federal discovery rules anticipate that production of documents and things from parties to the litigation be accomplished through Fed. R. Civ. P. 34. Rule 34(c) specifically directs that production of documents and things from non-parties be done by subpoena under Fed. R. Civ. P. 45.

Because the Advisory Committee anticipated that parties would be requested to bring documents to their depositions, Fed. R. Civ. P. 30(b)(5) makes it clear that if documents are required at a deposition of a party, the party seeking the documents must comply with Rule 34, which includes a 30 day period for the production to be made. No similar specific reference to Rule 34 is included in Rule 45 because the Advisory Committee did not anticipate that Rule 45 would be used to obtain documents from a party instead of Rule 34.

Thus, a party cannot use a subpoena under Rule 45 as a substitute to Rule 34 for the production of documents and things from another party to the litigation. If the present subpoena on Defendants William Richardson and Milbrand Roofing Company is considered as a Rule 34 request for production, it was not timely filed having been served just three days before the close of discovery.

Regarding the Rule 45 subpoena on non-party Lisa Richardson, it was not properly served by mailing of the subpoena to the person believed to be her attorney. Rule 45(b)(1) specifically requires personal service on a non-party and the tendering fees for one day's attendance and mileage (currently \$40 and \$0.485/mile).

Accordingly, the subpoena Attorney Dayna Milbrand issued on June 27, 2007, to Bill Richardson, Lisa Richardson and Milbrand Roofing Company is quashed as not being issued or served in compliance with the Federal Rules of Civil Procedure.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

SO ORDERED.

Dated: August 22, 2007
Flint, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Sarah C. Arnold, Michael J. Asher, Mark W. Jane, Dayna Milbrand, David Selwocki, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Milbrand Roofing Co., c/o Michael K. Roye, 2971 Bellevue St., Detroit, MI 48207, Michael K. Roye, 1508 Amelia, Royal Oak, MI 48073

s/ James P. Peltier
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